



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642-2544
All departments 508-240-5900 • Fax 508-240-1291
www.eastham-ma.gov

EASTHAM ZONING BOARD OF APPEALS MEETING MINUTES

Earle Mountain Room

June 3, 2021, 5:00 pm

ZBA members present: Edward Schneiderhan, Gay Craig, Joanne Verlinden, Robert
Bruns, Robert Sheldon, Brian Ridgeway (via videoconference)
ZBA members absent: None
Staff present: Paul Lagg, Town Planner

ZBA chair Ed Schneiderhan opened the meeting at 5:00 pm, explained new temporary meeting protocols and stated the meeting was being recorded.

Case No. ZBA2021-6 – 900 Cable Road, Map 23, Parcel 49. Chris and Eileen Particelli Trusts (Owners) seek a Variance pursuant to M.G.L. c. 40A s. 10 from Eastham Zoning By-law 2.4.1 (Uses – District F) and 7.1.5 (Intensity Regulations) to construct a detached garage within setbacks. Vote may be taken.

Seated on case: Schneiderhan, Ridgeway, Verlinden, Bruns, Craig

Ben Zehnder was present and described the proposal. The board members discussed the criteria for granting a variance and agreed the paper roads around the property created a unique hardship that prevented the property owners from using their property how they wished. The board members additionally noted the Cape Cod National Seashore representatives had no objection to the proposal. Bruce Spitler, 935 Cable Road Rear was present in favor of the proposal. There were no other comments from the public or from the Board.

A **MOTION** by Joanne Verlinden to grant a waiver regarding the submission of existing floor plans, **seconded** by Bob Bruns.

In favor: Schneiderhan, Ridgeway, Verlinden, Bruns, Craig

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Mr. Schneiderhan read the proposed **findings of fact**:

1. The property is located at 900 Cable Road (Map 23, Parcel 49) and is located in District F (Seashore).
2. The applicant has applied for a Variance pursuant to M.G.L. c. 40A s. 10 from Eastham Zoning By-law 2.4.1 (Uses – District F) and 7.1.5 (Intensity Regulations) to construct a detached garage within setbacks.
3. The lot size is pre-existing non-conforming at 20,404 sf.
4. The proposal received Planning Board Approval on May 19, 2021.
5. The Board voted to grant waivers to the application materials for the following items: floor plans for existing dwelling.

6. There are circumstances related to shape, topography and soil conditions that affect the land and structure. The lot at 900 Cable Road is entirely surrounded by streets, which is a result of uncommon circumstances related to the original layout of the neighborhood from the 1890s resulting in the creation of extremely small individual cottage lots that do not qualify for any grandfathering protection under local or State zoning statutes. These circumstances have resulted in a lot shape with a limited building envelope.
7. A literal enforcement of the provisions of the zoning ordinance would involve a substantial hardship. Under a literal enforcement of the 50 ft setback, the only permitted location for the proposed garage is an approximately 1,610 sf area at the center of the lot. That area is further reduced by the zoning bylaw section 7.2.1 which requires that detached buildings be separated by 8 feet from other structures on the lot, resulting in only a 1,288 sf area where the applicants could lawfully place a garage. This would result in a substantial hardship to any potential applicant seeking the same zoning relief.
8. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. The required setback to an abutting non-street property line in the Seashore District is 25 feet. The primary intent of the 50-foot setback is to preserve the rural character of the Seashore District. The intent is not harmed allowing a garage within the 50-foot setback of the paper road because the road is unimproved and is unlikely ever to be constructed due to the fact that the surrounding property is primarily owned by the federal government as part of the National Seashore. Further, locating the garage outside of the setback would require new clearing at the front of the lot, resulting in an uncharacteristic site design with an accessory building set in front of and blocking the principle dwelling. Such development would be counter to the zoning intent of the Seashore District's rural character.
9. One party in interest appeared in favor of the proposal and no letters were received regarding the proposal.

A **MOTION** by Joanne Verlinden to approve the findings of fact as stated, **seconded** by Bob Bruns.

In favor: Schneiderhan, Ridgeway, Verlinden, Bruns, Craig

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Mr. Bruns read the **conditions**:

1. No building permit shall be issued until the application complies with all pertinent sections of the Town of Eastham Zoning By-Law.
2. The applicant shall obtain a building permit from the Eastham Building Department prior to the start of construction activity.
3. The applicant shall verify bedroom count and septic design for adequacy with the approved plan with Eastham Health Department and if necessary shall obtain Board of Health approval prior to issuance of a building permit.
4. All exterior lights shall be down shielded to reduce light spill and nuisances to adjacent properties.
5. The applicant is responsible for providing building plans to the Eastham Building and Fire Departments. Plans shall contain information on construction methods and materials sufficient to conduct a full code compliance review.

6. Plan reviews conducted by town staff as part of this site plan approval have been conducted for conformance with applicable sections of the zoning bylaw and for adequacy of the site for public safety access and environmental impacts. Additional plan review for health and safety code compliance will be required and may result in changes to the approved plans. Any changes to the proposed site plan dated 3/20/21 or the proposed building plans dated 2/16/21 except those that are de minimis must be reviewed by the Board. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.
7. The Board reserves the right to monitor the ongoing construction for compliance with the approved plan.

A **MOTION** by Joanne Verlinden to approve the conditions as stated, **seconded** by Bob Bruns.

In favor: Schneiderhan, Ridgeway, Verlinden, Bruns, Craig

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

A **MOTION** by Brian Ridgeway to **GRANT A VARIANCE** for Case No. ZBA2021-6 to construct a detached garage within setbacks, **seconded** by Gay Craig.

In favor: Schneiderhan, Verlinden, Bruns, Craig, Ridgeway

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Case No. ZBA2021-7 – 130 Anne Road, Map 4, Parcel 289. Susan Palmer-Howes and Don Howes (Owner/Applicant) seek a Special Permit pursuant to M.G.L. c. 40A s. 6 and Eastham Zoning By-law section 7.2 (setbacks) and 4.3 (non-conforming uses) for additions to a pre-existing non-conforming dwelling. Vote may be taken.

Seated on case: Schneiderhan, Ridgeway, Verlinden, Bruns, Craig

Don Howes was present and described the proposal, noting it would lessen the current non-conformity. Ms. Craig asked for clarification regarding location of the bedroom windows, and the board members discussed private roads and rights-of-way. Mark Pierce of 4 Sandy Hill Lane, Joe D'Attilo of 185 Anne Road and Sharon Thornton of 5 Sandy Hill Lane were present in favor of the proposal. Mr. Schneiderhan read a letter from Carolyn Gorczyca, 6 Sandy Hill Lane, in opposition to the proposal. There were no other comments from the Board or from the public.

Mr. Bruns read the proposed **findings of fact**:

1. The property is located at 130 Anne Road (Map 4, Parcel 289) and is located in District A (Residential).
2. The applicant has applied for a Special Permit pursuant to M.G.L. c. 40A s. 6 and Eastham Zoning By-law section 7.2 (setbacks) and 4.3 (non-conforming uses) for additions to a pre-existing non-conforming dwelling.
3. The lot size is pre-existing non-conforming at 16,866 sf.
4. After an evaluation of all the evidence presented, the proposed use will not be substantially more detrimental to the established or future character of the neighborhood or the Town and the structure involved will be in harmony with the general purpose and intent of the Zoning

By-law and zoning district. The proposed living room addition, deck, and exterior stairs are permitted uses within the residential zoning district. The existing structure is non-conforming to the side (south) setback (18.5 feet (deck) where 30 feet is required). The proposed addition will reduce/improve the current non-conforming side setback by 4.3 feet, resulting in a 22.8-foot setback from Sandy Hill Lane.

5. The proposal will not have a negative impact on traffic flow and/or safety. No changes to the existing driveway are proposed. No negative issues related to the proposed project were identified.
6. The proposal will not have a negative impact on the visual character of the neighborhood. The visual impact from the street will be minimal. The proposed addition will result in a modest 6% increase to site coverage.
7. The proposal does have adequate methods of sewage disposal, sources of potable water and site drainage. Town water is available to the property. No negative issues pertaining to the wastewater utilities were identified.
8. The proposal does provide adequate protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies. A well variance was approved with conditions requiring Board of Health approval for increase in habitable space. The property has since connected to town water.
9. The proposal does provide adequate provision for utilities and other necessary or desirable public services. No issues related to the current or proposed utilities have been identified.
10. The proposal does provide adequate protection from degradation and alteration of the natural environment. The site is not located within any resource areas.
11. Artificial light, noise, litter, odor or other sources of nuisance or inconvenience will be adequately controlled. Conditions controlling exterior lighting will be added to the special permit. No other relevant issues were identified.
12. Three abutters appeared in favor of the proposal and one letter was received in opposition to the proposal.

A **MOTION** by Joanne Verlinden to approve the findings of fact as stated, **seconded** by Brian Ridgeway.

In favor: Schneiderhan, Craig, Bruns, Ridgeway, Verlinden

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Ms. Craig read the **conditions**:

1. No building permit shall be issued until the application complies with all pertinent sections of the Town of Eastham Zoning By-Law.
2. The applicant shall obtain a building permit from the Eastham Building Department prior to the start of construction.
3. The applicant shall verify bedroom count and septic design for adequacy with the approved plan with the Eastham Health Department and if necessary shall obtain Board of Health approval prior to the issue of a building permit.
4. All exterior lighting shall be down shielded to prevent light spill and nuisances to adjacent properties.

5. The applicant is responsible for providing building plans to the Eastham Building and Fire Departments. Plans shall contain information on construction methods and materials sufficient to conduct a full code compliance review.
6. Plan reviews conducted by town staff as part of this site plan approval have been conducted for conformance with applicable sections of the zoning bylaw and for adequacy of the site for public safety access and environmental impacts. Additional plan review for health and safety code compliance will be required and may result in changes to the approved plans. Any changes to the proposed site plan dated 4/5/21 or building plans dated 2/22/21 except those that are de minimis must be reviewed by the Zoning Board. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.
7. The Board reserves the right to monitor the ongoing construction for compliance with the approved plan.

A **MOTION** by Joanne Verlinden to approve the conditions as stated, **seconded** by Bob Bruns.

In favor: Schneiderhan, Craig, Verlinden, Bruns, Ridgeway

Opposed: None

The **VOTE**: 5-0

Motion passed – Unanimous

A **MOTION** by Bob Bruns to **GRANT A SPECIAL PERMIT** for Case No. ZBA2021-7 for additions to a pre-existing non-conforming dwelling, **seconded** by Gay Craig.

In favor: Schneiderhan, Craig, Verlinden, Bruns, Ridgeway

Opposed: None

The **VOTE**: 5-0

Motion passed – Unanimous

Case No. ZBA2021-8 – 8 Penny Lane, Map 10, Parcels 308/307. Carol and Richard Rennert (Owners) seek a Special Permit pursuant to M.G.L. c. 40A s. 6 and Eastham Zoning By-law section 7.2 (setbacks) and 4.3 (non-conforming uses) to demolish a pre-existing non-conforming dwelling and construct a new non-conforming dwelling. Vote may be taken.

Seated on case: Sheldon, Ridgeway, Verlinden, Bruns, Craig

Jason Ellis, Carol Rennert, Dick Rennert and Abigail Rennert were present. Mr. Ellis described the proposal, explaining the house location had been chosen in order to preserve as much of the existing vegetation as possible. Mr. Ellis further explained how Penny Lane terminates into Leland Road. The board members discussed the proposal and agreed the applicants had the ability to move the house into compliance with zoning setbacks. Mr. Bruns suggested the applicants ask to continue the case, which would give them time to consider moving the house into compliance or to provide a real explanation as to why they could not.

Ed Macomber, 45 and 55 Leland Road agreed that the setbacks could and should be met. Eric Wentworth, 10 and 12 Penny Lane was worried about site access, lack of space, and parking blocking the right-of-way. Mr. Cappel, 10 Fisher Road asked about the septic system location. There were no other comments from the Board or from the public.

The applicants requested a continuance to the July hearing. A **MOTION** by Bob Sheldon to continue Case No. ZBA2021-8 to July 1, 2021, **seconded** by Bob Bruns.

In favor: Sheldon, Craig, Verlinden, Bruns, Ridgeway

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Designate representative to serve on Strategic Planning Committee

Mr. Lagg described the duties of a representative to the Strategic Planning Committee. Ms. Craig indicated she might be interested in the position if she knew the exact meeting schedule. Mr. Lagg stated he would ask about the schedule and provide a response at the July meeting.

Minutes

A **MOTION** by Bob Bruns to approve the minutes of April 1, 2021 as amended, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Craig, Verlinden, Bruns, Sheldon

Opposed: Ridgeway

The VOTE: 5-0-1

Motion passed

Other business

Mr. Schneiderhan announced in-person meetings would soon be resuming. Mr. Ridgeway along with the entire Board thanked Mr. Schneiderhan for his years of service to the Board and as Chair.

Adjournment

A **MOTION** by Ed Schneiderhan to adjourn the hearing, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Craig, Verlinden, Bruns, Sheldon, Ridgeway

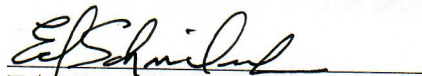
Opposed: None

The VOTE: 6-0

Motion passed – Unanimous

The meeting adjourned at 7:35 pm.

Respectfully submitted as prepared by Debbie Cohen



Ed Schneiderhan, Chairman

Zoning Board of Appeals